

FORM FOR USE IN APPLICATIONS

RECEIVED

FOR HABEAS CORPUS UNDER 28 U.S.C. §2254

2007 NOV 16 A 10:33

Ramon AGUILERA

Name

DEBRA P. HACKETT, CLK.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

#239536

Prison Number

3800 Fountain, ATMORE, AL 36503Fountain Correctional Center (Atmore, Alabama, Escambia County)

Place of Confinement

United States District Court Middle District of AlabamaCase No. 2:07 CV 1008 - MEF

(To be supplied by Clerk of U. S. District Court)

Ramon Aguilera, PETITIONER
(Full name) (Include name under which you were convicted)Jeremy Fernell, warden et al (State of Alabama), RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF AlabamaHonorable Troy King, ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8-1/2 x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper.* All pleadings, etc. filed after 12/31/82 must be on 8-1/2 x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies ^{*} must be mailed to the Clerk of the United States District Court whose address is
P. O. Box 711, Montgomery, Alabama 36101
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.
- ^{*}If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.

PETITION

1. Name and location of court which entered the judgment of conviction under attack Morgan County, Alabama (Northern District of Alabama 11th Cir)
2. Date of judgment of conviction April 7th 2004
3. Length of sentence 15 years / 10 years Sentencing Judge Glenn Thompson
4. Nature of offense or offenses for which you were convicted:
 - ONE COUNT OF First Degree Sodomy (15 yrs)
 - ONE COUNT OF First Degree Sexual Abuse (10 yrs)
 - ONE COUNT OF Second Degree Sodomy (15 yrs)
5. What was your plea? (check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

(a) Jury (☒)

(b) Judge only ()

7. Did you testify at the trial? Yes () No ()

8. Did you appeal from the judgment of conviction? Yes (☒) No ()

9. If you did appeal, answer the following:

(a) Name of court Criminal Court of Appeals CR-04-1360

(b) Result Affirmed

(c) Date of result February 3rd 2006

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: Continued Appeal process same grounds

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (☒) No ()

11. If your answer to 10 was "yes", give the following information:

(a)(1) Name of court Alabama Supreme Court

(2) Nature of proceeding Rehearing

(3) Grounds raised Actual innocence / Court without jurisdiction to render verdict based on Double Jeopardy.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (☒)

(5) Result Grant of Judgment (Denied)

(6) Date of result MAY 15, 2006

(b) As to any second petition, application or motion give the same information:

(1) Name of court Montgomery County Alabama

(2) Nature of proceeding Rule 32 Post Conviction

(3) Grounds raised Actual innocence, Factual Allegations Does Not meet Constitutional Law.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (☒)

(5) Result Denied in part

(6) Date of result August 22, 2006

(c) As to any third petition, application or motion, give the same information:

- (1) Name of Court Criminal Court of Appeals
 (2) Nature of proceeding Post Conviction Appeal
 (3) Grounds raised Actual Innocence By the Temporary Double Sentence by
Evidence Does Not meet Elements of Crime
Witness Victim Recant Allegations at Trial
Jury Cannot Assess Discretion

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (☒)

(5) Result Denial

(6) Date of result June 2007

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

- (1) First petition, etc. Yes (☒) No ()
 (2) Second petition, etc. Yes (☒) No ()
 (3) Third petition, etc. Yes (☒) No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Double Jeopardy / Double Punishment for Single Alleged Act

Supporting FACTS (tell your story briefly without citing cases or law): A three count indictment was returned alleging the Petitioner committed one of the encompassed AOS, arising from ONE SINGLE incident. (LATER Recanted)

B. Ground two: Malice Prosecution

Supporting FACTS (tell your story briefly without citing cases or law): DA. Know the Alleged victim was fabricating story to avenge her Step Father.

C. Ground three: Abuse of Judicial Powers

Supporting FACTS (tell your story briefly without citing cases or law): Abuse of Discretionary Powers by allowing perjured testimony after Court put on Notice that witness Recanted her story and the same was known to the presenter

D. Ground four: Due Process of Law Constitution and Statute

Supporting FACTS (tell your story briefly without citing cases of law): Allegation were in fact Recanted, There was No physical Evidence given DNA Biological or otherwise,

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:

ALL INCLUDED

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes () No (X)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing See Record from Circuit Court

(b) At arraignment and plea See Record from Circuit Court

- (c) At trial See Record From Circuit Court
- (d) At sentencing See Record From Circuit Court
- (e) On appeal See Record From Appellate Court
- (f) In any post-conviction proceeding pro se
- (g) On appeal from any adverse ruling in a post-conviction proceeding: pro se

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes (☒) No ()

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes (☒) No ()

(a) If so, give name and location of court which imposed sentence to be served in the future: MORGAN County Circuit Court

(State of Alabama)

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes (☒) No ()

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

PRO - SE

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 11-9-07.

(date)

Ramon Aguilera

Signature of Petitioner

Ramon Aguilera #239536
3800-Fontain G-Dorm
ATmore, AL 36503-5001

Unified States District Court
P.O. Box 717
Montgomery, AL 36101

